

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DEREK SINCERE BLACK WOLF CRYER

Plaintiff,

CIVIL ACTION

v.

NO. 1:05-cv-11289

KATHLEEN DENNEHY, MICHAEL THOMPSON,  
CAROL MICI, GREG McCANN, TINA RANNO,  
MAE ROBINSON, GREG POLADIAN,  
TOM LAVELLE, WILLIAM TAYLOR

Defendants,

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF  
MOTION FOR A PRELIMINARY INJUNCTION

FILED  
IN CLERKS OFFICE  
2006 JUN -5 P 3:49  
U.S. DISTRICT COURT  
DISTRICT OF MASS.

Statement of the Case:

This is a Civil Rights action brought under 42 U.S.C. Sec.1983 as well as the Religious Land Use And Institutionalized Person Act, The 1st, 8th, and 14th Amendments to the U.S. Constitution, and the provisions of The Massachusetts Constitution by a state prisoner whose been denied to practice the Spirituality of His choice (Black Indian Spirituality), and who has been denied access to several Spiritual Sacred Items and other Necessities for the purpose of practicing His Spirituality and seeks a preliminary injunction so that He may be able to Pray again, and to properly practice His Spirituality.

Statement of Facts:

As stated above and in the Plaintiff's Affidavit submitted with this motion, the Plaintiff has been denied by prison officials to practice Black Indian Spirituality, and has been denied several Sacred Objects and Items that are Necessary and Essential to Plaintiff's worship. The Plaintiff has been unable to Pray for the past 3-1/2 years or so due to the denial of Authenticated Personal Prayer Pipes and Ceremonial Tobacco. The Defendants

have used stall tactics for several years as it pertains to providing the necessary Spiritual Items, Objects, and Space, and still denies the Plaintiff to date. The Plaintiff has been forced to "Participate" in beliefs that are not His own, and because of the many denials has experienced extreme Emotional, Spiritual, and Psychological pain and suffering as He is unable to Pray.

## ARGUMENT

### POINT I

#### The Plaintiff is entitled to a Preliminary Injunction:

In determining whether a party is entitled to a preliminary injunction, Courts generally consider several factors: (1) whether the party will suffer irreparable injury, (2) the "balance of hardships" between the parties, (3) the likelihood of the success on the merits, and (4) the Public Interest. Each of these factors favors the granting of this motion.

#### A). The Plaintiff is threatened with irreparable harm.

The Plaintiff has been deprived by the Department of Correction (hereinafter the D.O.C) to practice Black Indian Spirituality and to obtain several Spiritual Sacred Items and objects that are essential to His Spirituality and the practice thereof. Such deprivations and conduct by prison officials is a clear violation of Plaintiff's 1st, 8th, and 14th Amendments to the U.S. Constitution and Massachusetts Constitution.

As a matter of law, the continued deprivation of Constitutional Rights constitutes irreparable harm. This principal has been applied in prison litigation generally, see *Phillips v. Michigan Dept. of Corrections*, 731 F. Supp. 792, 801 (W.D. Mich. 1990); *Cohen v. Coahoma County, Miss.*, 805 F. Supp. 398, 406 (N.D. Miss. 1992); *Campos V. Coughlin*, 854 F.Supp. 194, 204 (S.D.N.Y. 1994); *Williams v. Lane*, 646 F. Supp. 1379, 1409 (N.D.III. 1986); *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989); *Alameen v. Coughlin*, 892 F.Supp. 440, 442, 447, 450 (E.D.N.Y. 1995); *Ramirez v. Coughlin*,

919 F. Supp. 617 (N.D.N.Y. 1996). In addition, the Plaintiff has been and is continuously being threatened with irreparable harm because of the continued deprivation to practice His Spirituality and the denial of Sacred objects and items which are essential to His practice. Without access to such Sacred Items, Area, and Objects, Plaintiff is unable to Pray, and has been unable to Pray for several years, and practice His Spirituality.

**B). The balance of hardships favors the Plaintiff.**

In deciding whether to grant a preliminary injunction, Courts ask whether the suffering of the moving party if the motion is denied will outweigh the suffering of the non-moving party if the motion is granted. See *Mitchell v. Cuomo*, 748 F.2d 804,808 (2d Cir. 1984) (holding that dangers posed by prison crowding outweighed states financial and administrative concerns); see also *Henderson v. Harris*, 672 F.Supp. 1054 (N.D. III. 1987) and see *Duran v. Anaya*, 642 F. Supp. 510,527 (D.N.M. 1986) (holding that prisoners interest in safety and medical care outweighed states interest in saving money by cutting staff).

In this case, the present suffering of the Plaintiff and His potential suffering if He permanently loses His ability to practice His Spirituality are enormous. the "suffering" the Defendants will experience if the Court grants the order will consist of writing a notice or two revising policy to allow Plaintiff the practice of Black Indian Spirituality. The Defendants hardships will amount to no more than business as usual.

**C). The Plaintiff is likely to succeed on the merits.**

The Plaintiff has a great likelihood of success on the merits. Courts, some, have held that if a Plaintiff makes a strong showing that the balance of hardships favors Him/Her, then the Plaintiff need only show a "fair ground for litigation" and not a likelihood of success in order to obtain a preliminary injunction. See *Longstreth v. Maynard*, 961 F.2d. 895, 903 (10th Cir. 1992); and *Eng v. Smith*, 849 F.2d at 81.

D). The relief sought will serve the public interest.

In this case, the grant of relief will serve the public interest because it is always in the public interest for prison officials to obey the law. *Duran v. Anaya*, 642 F.Supp. 510, 527 (D.N.M. 1986) ("Respect for law, particularly by officials responsible for the administration of the state's correctional system is in itself a matter of the highest public interest."); see also *Llewelyn v. Oakland County Prosecutor's Office*, 402 F.Supp. 1379, 1393 (E.D. Mich. 1975) ("the Constitution is the ultimate expression of the public interest.").

#### POINT II

The Plaintiff should not be required to post security.

Usually a litigant who obtains injunctive relief is asked to post security in accordance with Rule 65 (c), Fed.R.Civ.P.. However, the Plaintiff is an indigent Pro se prisoner and is unable to post security. The Court has discretion to excuse as impoverished litigant from posting security. See *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 385 n. 30 (C.D. Cal. 1982); *J.L. v. Parham*, 412 F.Supp. 112, 140 (D.Ga. 1976), rev'd on other grounds, 442 U.S. 584, 99 S.Ct. 2493 (1979). See also *Cohen v. Coahoma County, Miss.*, 805 F.Supp. at 408, and *United States v. State of Oregon*, 675 F.Supp. 1249, 1253 (D.Or. 1987). In view of the serious Spiritual (Religious) access deprivations confronting the Plaintiff, the Court is asked to grant the relief requested without requiring the posting of security.

#### CONCLUSION

For the foregoing reasons, the Court should grant the motion in it's entirety.

Respectfully Submitted,

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Derek Sincere Black Wolf Cryer, Pro se  
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DATE: June 1, 2006

CC: file/6-1-06



# Black Indian Intertribal Spiritual Council



By Derek Sincere Black Wolf Cryer, Chief



# ***Black Indian Intertribal Spiritual Council***

*By Derek Sincere Black Wolf Cryer, Chief*

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## **1). BRIEF HISTORY:**

For this particular writing I begin with the European Slave Trade in America. Contrary to one's understanding, the first slaves in America were not people brought from the African coast nor did slavery begin its roots in North America. American slavery began when in 1492 Chris Columbus set sail from Spain to discover a new water route from Europe to present day China, in search of valuable spices and riches, but unknowingly got lost and landed on an Island area located in the Caribbean Sea which is known today as the Caribbean Islands, located off the coast of South America. After Columbus returned to Spain to give the good news of His successful "discovery" he was financially re-sponsored and set sail on his second of four voyages to the new world. He formed a settlement on the island of Hispaniola, which was comprised of Native Peoples of South America where he required every male native over the age of 14 to mine enough gold every three months to fill a small flask or risk death as punishment for failure. Hence, the First People, and the First Slaves in America. He then sent a gift of 500 Native Indians to Queen Isabella and King Ferdinand in the name of the Holy Trinity (of Christianity) with the request to send them as many more to sell and keep as slaves. This Request was granted; and with it, Columbus and other European colonist continued to enslave the Native Peoples, converting them to Christianity and forcing them to work on Spanish plantations on Hispaniola. Accordingly, for the next 400 years word spread through other European Nations who set out on their own expeditions to this "New World", and because of the many different European Nations and expeditions they launched, colonization spread to the eastern shores of North America where Native Indians were hunted down, captured and used for slave labor on sugar plantations back in the West Indies. The British however, in 1636, befriended the Narraganset and Mohegan Indian Tribes and attacked and slaughtered a village of Pequot Indians (an enemy to the Narraganset and Mohegan). The Pequot retaliated, but in 1637 the British attacked another Pequot village destroying it, ending the brief war. But this time there were captives who were both enslaved by the colonist and sold to settlers in the West Indies to work on sugar plantations. By 1670, the British would sell guns (sometimes giving them away) to the coastal tribes and encourage them to wage war against other enemy tribes and then sat back and capitalized on the intertribal conflicts and reinforced division amongst the Native Tribes; a system and term known as "Divide and Conquer". Captives in these battles were sold in the West Indies and in Spain along the Mediterranean coast. Large numbers of Native slaves such as the Choctaw and Cherokee were transported to Jamaica, Bermuda, and Barbados. But the work labor for Native Indians became too strenuous and decreased as European disease, brutal working conditions, and violence decimated them. Europeans, in their laziness, greed, savageness, and uncivilization hungered for more manpower....Destination.....AFRICA.

### **3). Primary Spiritual Tenet:**

As most Native Indians believe in a Mystery God (Great Mystery) or a "Creator" which is identified as a male (He) to whom prayers are sent, this Council's Tenets are very different in nature. The definition of "God" is *The highest degree of Spiritual and Physical Understanding*. God is Everything in Existence; the Two-Legged People, the Four Legged People, the Rock People, the Sea People, the Sky People, the Four Elemental People etc. "Individually" and Collectively we are all God, we are parts/embodiments of everything in existence. This is a Mathematical Undeniable Universal Truth. In Africa the word "*Sawabona*" is used as a greeting which means "I see you". It's not referring to the physical view of the person greeted; rather it's an acknowledging of the Life Energy (God) that lies within our physical bodies. This is the Sacred Circle of Life.

### **4). Council Structure:**

The Black Indian Intertribal Spiritual Council consists of seven (7) bodies of Duties and Responsibilities. They are as follows:

Chief: The Chief's Duty is to His-Self (or Her-Self). He must make sure that He is well physically, psychologically, emotionally, and spiritually so that He may maintain Harmony and Balance within His Life. This is crucial and necessary to the Chief's Responsibilities which is to maintain Clear Thought for proper Action (s) for His people.

Sub-Chief: The Sub-Chief's Duty is to take the Responsibility of the Chief in His absence. His responsibility is to ensure that the Chief is fulfilling His Duty. He also has a Duty to His-Self which mimics the duty of the Chief.

Pipe Bearer: The Pipe Bearer's Duty is to His-Self as well. This is extremely necessary as He is given the *Honor* to know and work with the Life Energies of the Sacred Pipe. He must have and or seek the required time necessary in order to maintain Balance in His Life, as any Desecration of the Sacred Pipe is Unacceptable. His responsibility is to pass on oral teachings of the Sacred Pipe to those that are qualified members in a good way.

Peacekeeper: The Peacekeeper's Duty is to His-Self. He must maintain Balance and Harmony within so that He is able and qualified to speak when or if the need occurs. His Responsibility is to the entire body of the Council to ensure that Peace is always present.

Shirt Wearer: The Shirt Wearer's Duty is to His-Self. He should remain Mentally and Physically healthy. A Shirt Wearer has the Responsibility to the entire body of the Council to know as much as He can about the Law pertaining to Native Indian subjects. He will do this through the Council's Legal Committee which will consist of legal advice from Private

- 8). Whenever possible we should build on all positive medicines which in turn will destroy and eliminate all negativity.
- 9). To strive to be born into Love, Honor, Respect, Humility, Balance, and Harmony without losing Our Warrior Spirit.
- 10). To know that the Circle is Our Life, and is Necessary for the Children and the Seven Generations to come.

**SOURCES:**

Black Indians – A Hidden Heritage by William Loren Katz / African Native Americans: We Are Still Here web page / Native Americans and Black Americans by Kim Dramer 1997 / Traditional Voices From the Eastern Door-Volume 1 Cassette- by George Paul, and James & Donna Augustine / Pitters Cherokee Trails web page / American Indian Medicine Society of the Iroquois Confederation of Six Nations. Edited and Transcribed by Derek Sincere Black Wolf Cryer.



For more information about the Black Indian Intertribal Spiritual Council contact Chief Derek Sincere Black Wolf Cryer at the address below:

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